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No. 85-298

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1985

JOHN F. CONNOLLY,
Petitioner,

vs.

ANDREW K. BURT,
Respondent.

SUGGESTION OF MOOTNESS

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February 24, 1986

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STATUTORY PROVISIONS:

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vs.

ANDREW K. BURT,

Respondent.

SUGGESTION OF MOOTNESS

Plaintiff, Andrew K. Burt, by and through his attorneys, Stutz, Dyer, Miller & Delap, respectfully moves this Court to remand this case to the United States District Court for the District of Denver with instructions to dismiss the cause as moot, and as grounds therefore shows unto the Court:

1. Defendants were served with a true and correct copy of the Summons & Complaint herein in the United States District Court, District of Colorado, on October 20, 1981.

2. Defendants filed a Motion to Dismiss on jurisdictional grounds on December 14, 1981, but have never filed or served a responsive pleading, and, under F.R.C.P. 41(a)(1), Plaintiff has an automatic right of dismissal until, and unless, a responsive pleading is filed or served by defendant.

3. Defendants never counterclaimed or brought an independent action against Plaintiff, and therefore dismissal of the original action by Plaintiff renders the action moot.

4. The U.S. District Court granted Defendants' Motion to Dismiss on October 1, 1982.

5. Plaintiff appealed the District Court's dismissal on November 12. 1982, alleging that there were not sufficient minimum contacts between Defendants and Colorado to warrant personal jurisdiction in Colorado. The United States Court of Appeals for the Tenth Circuit concluded that the District Court erred in its determination that it lacked personal jurisdiction over Dr. Connolly. The judgment was therefore reversed and remanded for further proceedings.

6. Defendants thereafter filed a Petition For Certiorari in the United States Supreme Court on August 22, 1985. This Court accepted Certiorari on December 2, 1985.

7. Plaintiff has exhausted all funds and resources required to pursue this action and has therefore decided to dismiss the suit in its entirety.

8. A Notice of Dismissal, pursuant to F.R.C.P. 41(a)(1), has been filed in the United States District Court for the District of Colorado, Civil Action Number 81 F

1850, on February 18, 1986. A copy of the Notice is attached hereto.

9. Art. III, § 2, of the United States Constitution, limits the jurisdiction of all federal courts to "cases and controversies". Since dismissal of the original action by Plaintiff eliminates any real or substantial dispute affecting the legal rights and obligations of parties having adverse interest, the U.S. Supreme Court does not have jurisdiction to hear this action and it should be dismissed as moot. *Aetna Life Ins. v. Haworth, 300 U.S. 227 (1937).*

10. An actual controversy must exist at all stages of review, not merely when the complaint is filed. The Court "does not sit to decide arguments after events have put them to rest". *Doremus v. Board of Education*, 342 U.S. 429, 431 (1952); *See Lake Coal Company, Inc. v. Roberts & Schaefer Co.*, 54 U.S.L.W. 4026 (U.S. No. 84-1240, Dec. 2, 1985). There is no such controversy in existence here and therefore the Court should dismiss this cause as moot.

STUTZ, DYER, MILLER & DELAP

By .....

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 81 F 1850

—o—

NOTICE OF DISMISAL

—o—

ANDREW K. BURT,

Plaintiff,

v.

THE BOARD OF REGENTS at the University of Nebraska, et al.,

Defendants.

Plaintiff, Andrew K. Burt, by and through his attorneys, Stutz, Dyer, Miller & Delap, gives notice of dismissal of the within action pursuant to F.R.C.P. 41(a)(1) and as grounds therefor shows unto the Court:

1. Plaintiff wishes to dismiss his action; and

2. No defendant has filed or served a responsive pleading.

Dated: February 18, 1986.

Respectfully submitted,
STUTZ, DYER, MILLER & DELAP

By .....
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